

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ERIC V. TRENT,

Appellant.

No. 33853-0-II

UNPUBLISHED OPINION

BRIDGEWATER, J. — Eric V. Trent appeals his conviction for attempting to elude a police vehicle claiming that the trial court abused its discretion by allowing him to represent himself and by denying his request for appointment of counsel on the day of trial. We affirm.

On June 11, 2005, Raymond city police officers arrested Trent in a blue Toyota truck. The officers arrested Trent several hours after other officers, for safety reasons, terminated a high-speed pursuit of the same blue Toyota.

On June 24, Pacific County charged Trent with one count of taking a motor vehicle without owner's permission and one count of attempt to elude a police vehicle. On July 11, at Trent's appearance, the trial court described the charges against Trent, warning him that both charges carried sentences of five years in prison and \$10,000 fines or both.

The trial court next asked Trent if he wanted the court to appoint an attorney. Trent replied that he did not and that he wanted to represent himself because he could "sell [himself] out just as quick as [an attorney] can." 1 Report of Proceedings (RP) (July 11, 2005) at 3. After a brief colloquy in which the trial court determined that Trent was familiar with the criminal justice system and knew representing himself was against most people's advice, the trial court accepted his waiver. The trial court also told Trent that if he changed his mind, it would appoint an attorney.

On July 15, the trial court arraigned Trent on an unrelated charge for unlawful firearm possession. After conducting that arraignment, the trial court addressed the original charges and again asked Trent if he wanted an attorney. Trent declined. Trent then told the trial court that he was working on an agreement with the prosecutor. Trent did accept an appointed attorney on the firearm charge, but he refused counsel when the State asked to have that attorney also appointed to represent on the original charges.

On August 19, Trent fired the attorney appointed on the firearm charge because the attorney was not representing his wishes. The trial court then engaged in an extended colloquy, describing the dangers of self-representation and the difficulty of mastering the technical court procedure rules. The trial court eventually persuaded Trent to accept another appointed attorney

on the firearm charge, but Trent steadfastly refused to accept an attorney on his taking a motor vehicle and attempt to elude charges.

On the same day, the trial court arraigned Trent on an unrelated first degree robbery charge, Trent's third criminal case. Trent asked to represent himself on this case as well. At the end of the hearing, the trial court again asked Trent if he wanted an attorney on either the original charges or the new robbery charge; Trent refused again.

On September 14, at a pretrial hearing, the trial court again warned Trent that he was going to have trouble with the technical evidence rules, but Trent replied that he was willing to take the risk. A few days later, in the final pretrial hearing, the trial court again asked Trent if he wanted an attorney on the charges in which he was pro se. Trent declined.

Two days before trial, Trent filed a motion to have standby counsel appointed to argue a discretionary appeal from one of the trial court's preliminary rulings. On the day of trial, however, he withdrew his request for a standby counsel after the trial court denied the motion for the interlocutory appeal.

Just before voir dire, Trent had a change of mind about proceeding pro se and moved for a continuance in order to have counsel appointed. He told the trial court that he had only a sixth grade education and that the trial court had not properly warned him. The trial court decided that it was too late in the process to request appointed counsel and denied the motions. Trent then asked to be returned to jail rather than be present at the trial, but the trial court advised him against that step. Trent eventually agreed to stay and represented himself at trial.

After closing arguments, Trent told the trial court that he no longer wanted to represent

himself on the robbery charge. Accordingly, the trial court appointed counsel for the robbery charge (cause number 05-1-196-6).

The jury acquitted Trent of the taking a motor vehicle without owner's permission charge but convicted him of attempt to elude a police vehicle. Trent represented himself at his sentencing and was sentenced to 25 and one-half months. He filed this timely appeal.

Trent argues that trial court erred in determining that he had knowingly waived his right to counsel at his first appearance on the taking and eluding charges. He also argues that the trial court abused its discretion by declining to reappoint counsel on the day of trial. We disagree.

Turning first to the issue of whether Trent knowingly waived his right to counsel and intelligently chose to represent himself, we review the trial court's disposition of a request to proceed pro se for abuse of discretion. *State v. Breedlove*, 79 Wn. App. 101, 106, 900 P.2d 586 (1995). A trial court abuses its discretion when the reason for its decision is manifestly unreasonable or based on untenable grounds. *State v. Cardenas*, 146 Wn.2d 400, 412, 47 P.3d 127, 57 P.3d 1156 (2002), *cert. denied*, 538 U.S. 912 (2003). On appeal, Trent carries the burden of showing that he did not intelligently waive his right to counsel. *State v. Hahn*, 106 Wn.2d 885, 900-01, 726 P.2d 25 (1986).

In exercising its discretion in this matter, the trial court must establish that a defendant is making a knowing and voluntary waiver of the right to counsel. *State v. DeWeese*, 117 Wn.2d 369, 377, 816 P.2d 1 (1991). In doing so, the court should indulge in every presumption against a valid waiver. *State v. Silva*, 108 Wn. App. 536, 539, 31 P.3d 729 (2001). And to be valid, the waiver must be unequivocal. *DeWeese*, 117 Wn.2d at 376.

Thus, when a defendant requests counsel, the trial court should generally engage in a detailed colloquy to determine if the waiver was knowing and voluntary. *DeWeese*, 117 Wn.2d at 378. In the absence of a colloquy, the record must reflect that the defendant understood (1) the seriousness of the charge, (2) the possible maximum penalty, and (3) the existence of technical procedural rules governing the presentation of his defense. *DeWeese*, 117 Wn.2d at 378. There is no checklist of risks the trial court must recite to the defendant; we review the facts and circumstances of each case. *DeWeese*, 117 Wn.2d at 378. Although we ordinarily require a colloquy in each individual case, where two actions are concurrent, both prosecutor and trial court are the same, and the parties cross-reference the cases, the colloquy in one case may be sufficient for the other. *Silva*, 108 Wn. App. at 540.

In this case, Trent was involved in three separate but concurrent criminal cases. Throughout the pretrial process, he, the trial court, and the prosecutor referenced all three cases interchangeably. In fact, at the final pretrial hearing, the State offered a global settlement involving the original charges, the robbery charge, and the gun possession charge. And when deciding to represent himself, Trent acknowledged that he was negotiating with the prosecutor on a deal that would resolve all the cases. Accordingly, we consider the warnings from all the various pretrial hearings. *See Silva*, 108 Wn. App. at 540.

The record from Trent's various pretrial hearings shows that the trial court adequately and repeatedly warned him about the seriousness of the charges and the dangers of self-representation. The trial court notified Trent that he was charged with two crimes that each carried a maximum penalty of five years and/or \$10,000 in fines. It warned Trent that both charges were felonies.

Trent acknowledged the severity of the charges and even correctly calculated his potential sentence. Thus, the trial court properly informed Trent of the maximum penalty and the severity of the charges. *See DeWeese*, 117 Wn.2d at 378.

And the record shows that the trial court adequately warned Trent about the existence of technical rules. In various proceedings, the trial court engaged in lengthy colloquies with Trent warning him of the technical difficulties of representing himself. This included warning him about the difficulty of meeting objections, making hearsay objections, and understanding the rules of evidence. The trial court also warned him that he would not be able to appeal issues he did not properly preserve. Before trial began, the trial court again warned Trent that he was going to have difficulty with the procedural rules in court, and Trent acknowledged he was willing to take the chance.

Throughout the process, the trial court indicated it was willing to appoint counsel and kept asking Trent, until five days before the trial, if he wanted an attorney. Trent steadfastly refused counsel despite these warnings.

On this record, the trial court did not abuse its discretion in finding that Trent unequivocally waived his right to counsel and knowingly chose to represent himself. The trial court adequately discussed the risks of self-representation and properly warned Trent of the seriousness of the charges.

Trent next argues that even if he did waive his right to counsel, the trial court erred by not appointing a counsel on the day of trial when Trent finally decided he wanted an attorney. We hold that the trial court did not abuse its discretion in denying the request.

Once a defendant unequivocally waives his right to counsel and decides to represent himself, reappointment of counsel is within the trial court's discretion. *DeWeese*, 117 Wn.2d at 376-77. In exercising its discretion, the trial court should consider all the facts and circumstances of the case, but it should grant the request for reappointment absent reasons to deny it. *State v. Canedo-Astorga*, 79 Wn. App. 518, 525, 903 P.2d 500 (1995), *review denied*, 128 Wn.2d 1025 (1996).

If such a request comes on the eve of trial and will cause a delay if granted, the trial court is within its discretion to deny it. *Canedo-Astorga*, 79 Wn. App. at 525. This is because the right to proceed pro se cannot be used as a means of unjustifiably delaying a scheduled trial or to obstruct the orderly administration of justice. *State v. Fritz*, 21 Wn. App. 354, 361, 585 P.2d 173 (1978), *review denied*, 92 Wn.2d 1002 (1979).

And a defendant's ineptitude as an attorney is not, by itself, a reason to reappoint counsel. *Canedo-Astorga*, 79 Wn. App. at 526. The risk that a defendant will be inept is one of the primary reasons that we require the trial court to question and warn the defendant about the risks of self-representation. *Canedo-Astorga*, 79 Wn. App. at 526. Where the defendant has unequivocally waived his right to counsel and voluntarily assumes the known associated risks, the fact that the defendant finds proceeding pro se difficult, just as the trial court warned him, is unremarkable. To require a trial court to grant the request for reappointment on these grounds, without regard for judicial economy concerns, would subject the trial court to a defendant's "manipulative vacillations" regarding representation. *Canedo-Astorga*, 79 Wn. App. at 526 (citing *DeWeese*, 117 Wn.2d at 376).

Here, the trial court warned Trent several times about the danger he would face if he represented himself. The trial court even offered to appoint an attorney five days before trial, but Trent, having been warned, decided to proceed pro se. Moreover, on the day of trial, Trent refused to accept standby counsel, who may have mitigated Trent's technical inexperience.

Here, granting Trent's motion to reappoint counsel would have delayed the trial. Because Pacific County is a small county with a limited jury pool, each jury panel is used for an entire month. As a result, a defendant can only have one trial per month. And the trial court had already experienced difficulty scheduling the trial given Trent's other criminal cases. A further delay would have required moving those cases back as well.

Given these facts, the trial court was within its discretion in denying Trent's untimely motion for counsel. Trent knowingly assumed the risks of self-representation and was not entitled to reappointment at such a late stage when it would compromise judicial economy and the trials for his other pending criminal charges.

Trent, relying on *United States v. Proctor*, 166 F.3d 396 (1st Cir. 1999), argues that because the trial court did not make an explicit finding that he was acting in bad faith with the purpose to delay, we should find the trial court abused its discretion and award a new trial. This argument also fails.

In *Proctor*, the defendant fired his attorney and asked to represent himself. *Proctor*, 166 F.3d at 397. After a colloquy, the trial court found that he had knowingly and voluntarily waived his right. *Proctor*, 166 F.3d at 398. In a pretrial hearing two months before trial, the defendant requested, in ambiguous language, reappointment of counsel. *Proctor*, 166 F.3d at 400. The

defendant's phrasing could have been interpreted as a request for an attorney to assist on that particular hearing or to have one appointed for the rest of the trial. *Proctor*, 166 F.3d at 403.

The First Circuit remanded for a new trial, finding that the trial court had improperly denied the request for counsel. *Proctor*, 166 F.3d at 406. The appellate court reasoned that because courts must indulge in reasonable presumptions against waiver, the trial court should have accepted the interpretation in favor of the right to counsel. *Proctor*, 166 F.3d at 405. The court also indicated that the government could not justify the denial on the alternative grounds that appointment of counsel would have caused a delay. *Proctor*, 166 F.3d at 403. The court reached this conclusion in part because the defendant requested counsel well before trial, and because the trial court had made no express finding that the request was in bad faith. *Proctor*, 166 F.3d at 403.

Trent points out that the trial court here did not make an express finding and urges that we remand for a new trial on that basis. But Trent overstates the holding in *Proctor*. The First Circuit specifically noted that it was within the trial court's discretion to refuse a defendant's request for an attorney on the eve of trial. *Proctor*, 166 F.3d at 402. And the court also noted that if the request had been untimely, "[T]he decision to deny counsel could in no respect be deemed an abuse of discretion." *Proctor*, 166 F.3d at 403. In other words, the trial court does not need to make an express finding of bad faith when it denies an untimely motion.

Proctor is thus distinguishable from this case. Unlike in *Proctor*, Trent waited until the day of trial to change his mind and request counsel. It was within the trial court's discretion to deny such an untimely request on the eve of trial after the defendant knowingly waiving the right

to counsel. *Proctor*, 166 F.3d at 402.

Trent also argues that the trial court violated his right to counsel because no attorney appeared at his sentencing on the eluding charge after Trent requested an attorney for his robbery trial. But as the State correctly notes, Trent did not request an attorney for sentencing; he requested an attorney on only the robbery charge. Thus, the trial court did not violate Trent's right to counsel by allowing him to continue pro se at his sentencing for the eluding charge.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Houghton, P.J.

Hunt, J.